

# HOUSE BILL REPORT

## HB 2516

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**As Reported by House Committee On:**  
Technology, Energy & Communications

**Title:** An act relating to small facility siting.

**Brief Description:** Regarding the siting of small alternative energy facilities.

**Sponsors:** Representatives Morris, Chase, Hudgins and Morrell.

**Brief History:**

**Committee Activity:**

Technology, Energy & Communications: 1/18/10, 1/28/10 [DPS].

**Brief Summary of Substitute Bill**

- Authorizes the Energy Facility Site Evaluation Council (EFSEC) to permit small alternative energy resource facilities.
- Exempts the permitting of small alternative energy resources from the EFSEC's adjudicatory proceeding process and review and approval by the Governor.
- Authorizes the EFSEC and local governments to enter into inter-local agreements to permit small alternative energy resource facilities within the geographic jurisdiction of the local government.

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### HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives McCoy, Chair; Finn, Vice Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Carlyle, Condotta, Eddy, Hasegawa, Hinkle, Hudgins, Jacks, McCune, Morris, Nealey, Takko, Taylor and Van De Wege.

**Staff:** Scott Richards (786-7156).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Under current Washington law, the Energy Facility Site Evaluation Council (EFSEC) provides a "one-stop" siting process for major energy facilities in Washington. The EFSEC coordinates all evaluation and licensing steps for siting certain energy facilities in Washington. The EFSEC specifies the conditions of construction and operation. If approved, a site certification agreement is issued in lieu of any other individual state or local agency permits.

The EFSEC is comprised of a chair appointed by the Governor, and representatives from five state agencies. Agencies represented on the EFSEC include: (1) the Department of Commerce; (2) the Department of Ecology; (3) the Department of Fish and Wildlife; (4) the Department of Natural Resources; and (5) the Utilities and Transportation Commission. When an application to site a facility is submitted to the EFSEC, representatives from particular cities, counties, or port districts potentially affected by the project are added to the EFSEC for proceedings related to the project.

The energy facilities subject to review by the EFSEC include:

- thermal electrical generation power plants with electrical generating capacity of 350 megawatts (MW) or more;
- floating thermal power plants of 100 MW or more;
- alternative energy electrical generation facilities of any size for which an applicant chooses to receive certification under the EFSEC;
- crude or refined petroleum, or liquid petroleum product pipelines larger than six inches in diameter and greater than 15 miles in length;
- natural gas, synthetic fuel, gas, or liquefied petroleum gas pipelines larger than 14 inches in diameter and greater than 15 miles in length (intrastate only);
- electrical transmission facilities in a national interest electric transmission corridor;
- electrical transmission facilities over a certain voltage for which an applicant chooses to receive certification under the EFSEC;
- new refineries capable of processing more than 25,000 barrels per day of petroleum into refined product; and
- any underground natural gas storage reservoir capable of delivering more than 100 million cubic feet per day.

#### Eligible Alternative Energy Resources.

Alternative energy resources eligible for site certification under the EFSEC include: (1) wind; (2) solar energy; (3) geothermal energy; (4) landfill gas; (5) wave or tidal action; or (6) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

#### Adjudicative Proceedings.

The EFSEC's adjudicatory proceedings process is a formal hearing process similar to courtroom proceedings, where the EFSEC hears from the official parties to the proceedings. The certification process requires the EFSEC to hold hearings on proposed projects to allow the applicant and opponents to present information to support their cases. The EFSEC's

adjudicative proceedings must be conducted as required under the Adjudicative Proceedings Act.

#### Site Certification Compliance Monitoring.

The EFSEC is authorized to delegate to a state agency, through an interagency agreement, responsibilities relating to site certification compliance monitoring of the construction and operation of an energy facility.

#### Recommendation to the Governor.

If the EFSEC determines the project should be recommended to the Governor, it develops an administrative order on its recommendation and a draft Site Certification Agreement (SCA) to be signed by the Governor. The SCA has all of the environmental, social, economic, and engineering conditions the applicant must meet for construction and operation throughout the life of the project. If the EFSEC determines the project should not be recommended to the Governor for approval, the final order explains the EFSEC's decision. The Governor has 60 days to consider the EFSEC's recommendation and can take one of the following actions: (1) approve the EFSEC recommendation and execute the draft SCA; (2) reject the application; or (3) direct the EFSEC to reconsider certain aspects of the project and draft SCA.

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#### **Summary of Substitute Bill:**

##### Site Certification of Small Alternative Energy Resource Facilities.

The EFSEC is authorized to receive site certification applications for small alternative energy resource facilities that connect at the electric distribution level and certify a small alternative energy resource facility. Any person may apply to the EFSEC for site certification of a small alternative energy resource facility. A site certification issued by the EFSEC for a small alternative energy resource facility preempts any permit issued by a local government, if the local government has not adopted permitting codes for these facilities in the last 10 years.

A "small alternative energy resource facility" has the same definition as a net metering system. Under current law, a "net metering system" is a fuel cell, a facility that produces electricity and used and useful thermal energy from a common fuel source, or a facility for the production of electrical energy that generates renewable energy, and that: (1) has an electrical generating capacity of not more than 100 kilowatts; (2) is located on the customer-generator's premises; (3) operates in parallel with the electric utility's transmission and distribution facilities; and (4) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

To perform its duties in certifying small alternative energy resource facilities, the EFSEC is: (1) directed to survey for and determine the safest standards for the siting of small alternative energy resource facilities and adopt site certification standards based on these standards; (2) authorized to charge an application processing fee that represents full cost recovery of expected application costs incurred by the EFSEC and costs of compliance inspections

delegated to local governments where compliance is not preempted by other state agencies in statute; (3) required to certify a small alternative energy resource facility site in 30 days; and (4) authorized to delegate authority to the EFSEC staff to issue small alternative energy resource facility site certificates.

In determining the safest standards for small alternative energy resource facilities, the EFSEC must survey permitting and siting standards for these facilities in the following order of preference of application: (1) existing local municipal and county codes in Washington adopted in the last 10 years; (2) existing state, local, or municipal codes in the Western Electric Coordinating Council geographic area adopted in the last 10 years; and (3) existing state, local, or municipal codes adopted in the United States in the last 10 years.

#### Written Cost Estimates.

Before submitting a site certification application for a small alternative energy resource facility, an applicant may submit a letter to the EFSEC to inquire as to whether a proposed facility would require mitigation and receive a written cost estimate from the EFSEC of the cost of processing the application.

#### Exemption from Certain EFSEC Processes.

The site certification for small alternative energy resources is exempted from the EFSEC's adjudicatory proceeding process and review and approval by the Governor.

#### Site Certification Compliance Monitoring.

The EFSEC is authorized to delegate to a local agency, through an interagency agreement, responsibilities relating to site certification compliance monitoring of the construction and operation of an energy facility.

#### The EFSEC and Local Government Agreements.

The EFSEC and any local government in the state are authorized to enter into an inter-local agreement for the purpose of permitting small alternative energy resource facilities within the geographic jurisdiction of the local government. The EFSEC may serve as the permitting authority for a local government, if the local government determines that it would be more cost effective for the EFSEC to permit small alternative energy resource facilities within their jurisdiction.

An inter-local agreement entered into by the EFSEC and any local government for the purposes of permitting small alternative energy resource facilities supersedes the authority of the EFSEC to site these facilities on a case-by-case basis.

#### **Substitute Bill Compared to Original Bill:**

A site certification issued by the EFSEC for a small alternative energy resource facility preempts any permit issued by a local government, if the local government has not adopted permitting codes for these facilities in the last 10 years. The method used by the EFSEC to

calculate an application processing fee is modified to reflect the full cost recovery of expected application costs incurred by the EFSEC and the cost of compliance inspections delegated to local governments where compliance is not preempted by other state agencies in statute. The definition of a "small alternative energy resource facility" is changed to have the same meaning as a net metering system. The EFSEC is authorized to delegate to a local agency, through an interagency agreement, responsibilities relating to site certification compliance monitoring of the construction and operation of an energy facility. An inter-local agreement entered into by the EFSEC and any local government for the purposes of permitting small alternative energy resource facilities supersedes the authority of the EFSEC to site these facilities on a case-by-case basis. In determining the safest standards for small alternative energy resource facilities, the EFSEC must survey permitting and siting standards for these facilities in the following order of preference of application: (1) existing local municipal and county codes in Washington adopted in the last 10 years; (2) existing state, local, or municipal codes in the Western Electric Coordinating Council geographic area adopted in the last 10 years; and (3) existing state, local, or municipal codes adopted in the United States in the last 10 years.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on July 1, 2010.

**Staff Summary of Public Testimony:**

(In support) This bill is in response to a number of small wind system developers who were running into problems getting their systems permitted on the local governmental level, especially where governments have no experience or expertise in permitting these systems. This bill provides small alternative energy system developers with the ability to write the EFSEC to see how much it would cost to review their proposed system and have the EFSEC determine if their system is within the safest known standards. The developer can then choose to have the EFSEC issue a permit for that system. Also, this bill authorizes local governments and the EFSEC to enter into an agreement for the EFSEC to permit small alternative energy system on the behalf of a local government. The idea behind this bill is to speed up the application process.

(Opposed) Cities and counties are typically the permitting authorities for their local communities and have trained professional staff that work to balance all interests in a permit application and approval processes. This bill moves the permitting process away from local processes and into the hands of state agencies. This bill would preempt local governments from making local decisions.

**Persons Testifying:** (In support) Representative Morris, prime sponsor.

(Opposed) Victoria Lincoln, Association of Washington Cities; and Scott Merriman, Washington State Association of Counties.

**Persons Signed In To Testify But Not Testifying:** None.